

STATE OF INDIANA



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**PETITION OF Z-TEL COMMUNICATIONS, INC.)
FOR PROTECTION OF CERTAIN INFORMATION)
AS TRADE SECRET AND CONFIDENTIAL)
PURSUANT TO IC 5-14-3-1, ET SEQ.)**

CAUSE NO. 42610

FILED

MAY 05 2004

You are hereby notified that on this date the Presiding Officer makes the following Entry in this Cause:

INDIANA UTILITY
REGULATORY COMMISSION

On April 1, 2004, Z-Tel Communications, Inc. ("Z-Tel") filed a *Motion for Trade Secret Exemption and Confidential Treatment of Proprietary Information in Application* ("Petition") with the Indiana Utility Regulatory Commission ("Commission"), seeking confidential treatment of Z-Tel's responses to Sections II, III and IV of the Commission-issued *Local Competition Survey As Of 12/31/03* ("Survey"). Sections II, III and IV of the Survey ask for the number of facilities based, resold, UNE-P, UNE-Loop, and special access lines, for both residential and nonresidential customers in three geographic regions of the State (north, central and south), provided both to end users and to other carriers, as well as the totals thereof. The Survey responses that are the subject of Z-Tel's confidentiality claim are applicable to the twelve-month period ending December 31, 2003, and were due to be submitted to the Commission by March 31, 2004.

In addition, Z-Tel's Petition asks that the requested confidentiality determination also be applicable to each and every filing made by Z-Tel with respect to the Commission's 2004 Local Competition Survey.

On April 1, 2004, Z-Tel also filed a *Verified Motion to Allow Late-Filed Motion for Trade Secret Exemption and Confidential Treatment of Proprietary Information in Application* ("Motion to Late File"). The Motion to Late File recognizes that 170 IAC 1-1.1-4(a) requires an application for confidentiality of a public record to be filed on or before the date the information is required to be filed. Since the Survey responses were due March 31, 2004, Z-Tel's Petition was filed one day out of time. The Motion to Late File asserts that the Petition, along with several other pleadings, had been prepared for filing with the Commission on March 31, 2004. After filing the other pleadings, Counsel for Z-Tel realized that the Petition had been inadvertently left on the tray of the copy machine and could not be retrieved in time to file before close of business on March 31, 2004. The Petition was filed on the morning of April 1, 2004. The Motion to Late File presents a reasonable explanation as to why the Petition was late-filed. The Petition was prepared in anticipation of timely filing, was filed only one day late, and no objection to

the Motion to Late File has been submitted. Therefore, Z-Tel's Motion to Late File is granted.

Z-Tel seeks confidential protection of its responses to Sections II, III and IV of the Survey pursuant to the Commission's procedural rule found at 170 IAC 1-1.1-4, and relies on the trade secret exception to public disclosure of public records found at Ind. Code 5-14-3-4 and 24-2-3-2 as the basis for its confidentiality claim.

Accompanying the Petition was the *Affidavit of Timothy M. Seat* ("Affidavit"). Timothy M. Seat is Vice President Regulatory Affairs for Z-Tel. In support of Z-Tel's claim that responses to Sections II, III and IV of the Survey contain trade secret information, the Affidavit states:

. . . the number of customers served by Z-Tel in Indiana, the distinction between residential and business customers and the further distinction between regions of the state is not readily ascertainable. Further, the fact that this information is not readily ascertainable derives independent economic value for Z-Tel. The Company's marketing focus, effectiveness and market penetration all are of strategic value to the Company. If revealed, the Company would lose an edge in the marketplace.

With respect to maintaining confidentiality of the responsive information at issue, the Affidavit states:

Customer information of this type is not publicly disseminated. Z-Tel also is careful to guard this information internally as well. Its disclosure is limited to those employees whose job responsibilities entail compiling the data, preparing regulatory filings incorporating the data, as required, protecting Z-Tel's rights with regard to preventing unwarranted dissemination of this information, or crafting and implementing business and marketing plans dependent on this information. Those employees who are not directly involved with these functions are not given access to this information.

The Presiding Officer, having reviewed the Petition and its accompanying Affidavit, finds that there is a sufficient basis for a preliminary determination of confidentiality with respect to the designated Survey responses that are identified above. The Affidavit contains a sufficient description of the nature of the information for which confidential treatment is sought. The Affidavit presents factual information sufficient to show that the designated Survey responses, due to be submitted to the Commission by March 31, 2004, contain information that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. The Affidavit also presents factual information sufficient to show that Z-Tel has made efforts that are reasonable under the circumstances to maintain secrecy of the information for which confidential treatment is sought.


It is noted, however, that this Petition is very broad in that it seeks confidential protection of each and every response with respect to lines in service. While possible, it is unlikely that Z-Tel is providing facilities based, resold, UNE-P, UNE-Loop, and special access lines, for both residential and nonresidential customers in each of the three geographic regions of the State (north, central and south), and that it is providing all such services to both end users and to other carriers in each of these geographic regions. On page nine of its January 28, 2004 Order in Cause Nos. 42537, 42540, 42542, 42544 and 42545, the Commission found that "a blank or zero response in the 2003 Survey is not a response subject to trade secret protection." In fact, the Order in Cause No. 42545 approved confidential treatment with respect to Z-Tel's responses in Sections II, III and IV of the 2003 Local Competition Survey for the nine-month period ending September 30, 2003. Therefore, this preliminary determination of confidentiality does not apply to any responses in Sections II, III and IV of the Survey that are blank or zero.

Z-Tel's request that this confidentiality determination be also applicable to its responses to the Commission's 2004 Local Competition Survey is denied. The Commission's 2004 Local Competition Survey has not yet been produced. The 2004 Local Competition Survey may be in a different format and may request different information from that in the 2003 Survey. It would be inappropriate to pre-approve confidential treatment of responses to a public record that does not yet exist, and the form and content of which are not yet finalized. In addition, with a significant passage of time between survey responses, the factual information that Z-Tel will need to determine and submit in an effort to satisfy the elements of trade secret protection for the 2004 Survey responses may not necessarily be the same as the factual information that existed for the 2003 Survey responses.

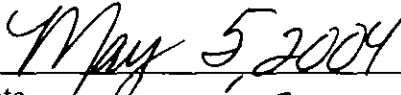
Accordingly, within seven (7) days of the date of this Entry, Z-Tel should hand deliver to Commission Principal Telecommunications Analyst Mark Bragdon, in a sealed envelop that is clearly marked "confidential" and with the Cause Number noted thereon, its completed responses to Sections II, III and IV of the Survey.

This responsive information should be handled and maintained as confidential, in accordance with Ind. Code 5-14-3.

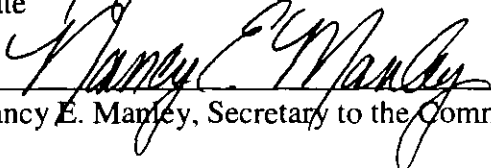
IT IS SO ORDERED.



William G. Divine, Administrative Law Judge



Date



Nancy E. Manley, Secretary to the Commission